

ISSUE DATE: October 24, 1997

DOCKET NO. P-421/C-94-842

ORDER DENYING RELIEF AND DISMISSING COMPLAINT

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey
Joel Jacobs
Marshall Johnson
Gregory Scott
Don Storm

Chair
Commissioner
Commissioner
Commissioner
Commissioner

In the Matter of a Complaint Against
U S WEST Communications, Inc. Regarding
an Installation Dispute at Wee Villa Resort

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PROCEDURAL HISTORY

During the summer of 1994 Cory Heit filed an informal complaint with the Consumer Affairs Office of this Commission, claiming that U S WEST Communications, Inc. had improperly refused to establish a separate demarcation point for telephone service for each rental lot within his resort and campground, Wee Villa Resort. Mediation by the Consumer Affairs Office did not resolve the dispute. In September of 1994 Consumer Affairs referred the matter to the Department of Public Service (the Department) for further investigation.

On March 1, 1996 the Department filed its initial comments, urging the Commission to require U S WEST to establish individual demarcation points for each manufactured home, park trailer, travel trailer, and recreational vehicle at the resort. On March 15, 1996 the Company filed reply comments opposing the Department's recommendation.

The matter came before the Commission three times in April and May of 1996, when it became clear that the facts in the record were not adequate to support a fully informed decision. The Commission deferred action to permit further factual development and further settlement discussions by the parties.

In July 1996 the Company and the Department filed further comments, reiterating and elaborating upon their original positions. In August 1996 Mr. Heit requested a delay in proceedings until after the summer resort season.

Discovery and settlement discussions continued until the matter again came before the Commission on May 6, 1997 and October 7, 1997.

FINDINGS AND CONCLUSIONS

I. Factual Background

Wee Villa Resort is a 39-acre recreational complex near Fergus Falls in Otter Tail County. The resort is basically a seasonal mobile home park; it contains 66 mobile homes, seven travel trailers, and eight cabins. Resort guests own these structures or vehicles and lease their lots for twelve month periods from resort owner Cory Heit. Mr Heit holds a seasonal mobile home license from Otter Tail County.

Although lots are rented for twelve month terms, none of the guests live there year-round. Mr. Heit reports that the resort season runs from April 15 to October 15, but that water service is provided only from May to September.

U S WEST has refused Mr. Heit's request to install the facilities necessary to bring telephone service to each lot in the resort, claiming its tariffs require resort owners to install facilities beyond the point or points at which the Company enters the resort property. Mr. Heit claims the Company should treat Wee Villa as a mobile home park, not a resort. Company tariffs require it to bring service to each individual lot in a mobile home park.

The only utility currently providing service to the resort on a lot-by-lot basis is a cable television company. Water and sewer service are provided by Mr. Heit as part of the rental fee. Electric service is provided by the local utility to Mr. Heit, who sells it to guests on a metered basis. The U. S. Postal Service does not deliver door-to-door, but makes a bulk delivery to the resort office.

II. Demarcation Law and Policy

In February of 1986 the Federal Communications Commission (FCC) deregulated inside wiring and required the states to deregulate inside wiring as well.¹ "Inside wiring" generally means the wiring and incidental equipment on customer property beyond the demarcation point, the point to which the carrier brings the facilities and equipment necessary to connect with the public network. The deregulation of inside wiring was part of the continuing federal initiative to introduce competition into the telecommunications industry.

The FCC gave the states considerable latitude in determining the location of demarcation points, where responsibility for installation and repair shifts from companies to customers. In an industry-wide proceeding, this Commission developed the general principle that demarcation points would be established by mutual agreement at or near the place where the company's

¹FCC Docket 79-105, Order dated February 24, 1986.

facilities entered the customer's building or property.² The Commission considered this a workable starting point which could be adapted for local conditions or special circumstances through individual company tariff filings and, as necessary, complaint proceedings.

On September 24, 1987 the Commission approved U S WEST's (then Northwestern Bell Telephone Company) demarcation point tariff, permitting the Company to install a single demarcation point in most multi-building, single-owner property situations.³ Almost immediately, complaints were filed by the Builders Association of Minnesota and a mobile home park owner, Michael Ives.

After examining these complaints, the Commission found that U S WEST's demarcation policies for residential property had to be changed:

The Commission finds that the single demarcation point policy as currently applied to residential property causes unintended hardship to manufactured home owners. It results in different treatment of townhouse occupants, depending upon their status as owners or renters. It increases the cost of housing, other than single-family detached housing, to the consumer. These results are inconsistent with the Commission's longstanding concern for the needs of renters and low-income people and for the continuation of universal service.

* * * * *

The Commission further finds that the single demarcation point policy as currently applied in the residential context results in greater disparity between the demarcation points of gas, electric, and telephone utilities, rather than promoting uniformity.

For these reasons, the Commission concludes that the demarcation provisions of Northwestern Bell's tariff, approved September 24, 1987, should be modified as they relate to residential property. The Commission will so order. In the future, Northwestern Bell's demarcation point policy for residential property will be the following.

²In the Matter of the Deregulation of the Installation and Maintenance of Inside Wiring, Based on the Second Report and Order in FCC Docket 79-105 Released February 24, 1986, Docket No. P-999/CI-86-747, FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER REQUIRING FILINGS OR TO SHOW CAUSE (December 31, 1986).

³Order Approving Northwestern Bell Revised Tariff Pages for Service Responsibility and Single Demarcation Points, Docket No. P-999/CI-86-747.

Northwestern Bell will provide a demarcation point for each residential structure having a separate ground level entrance. Residential structures sharing common walls, but not sharing common entrances or common space, such as hallways or basements, will have separate demarcation points. Multi-tenant residential structures sharing common entrances or common space will have one demarcation point provided as a regulated service. "Residential structure" does not include garages, barns, or other buildings situated on residential property but not intended for human habitation.

In the Matter of the Complaint Against Northwestern Bell Telephone Company By the Minnesota Builders Association; In the Matter of the Complaint Against Northwestern Bell Telephone Company By Michael Ives, Docket Nos. P-421/C-87-610, P-421/C-87-680, ORDER DIRECTING CHANGES IN NORTHWESTERN BELL TELEPHONE COMPANY'S TARIFF REGARDING DEMARCATION POINTS FOR RESIDENTIAL PROPERTY (November 13, 1987).

The Company duly filed new demarcation point tariffs to comply with the Commission's Order. Under those tariffs the Company generally provides individual demarcation points for mobile homes, townhouses, and similar structures. It does not provide individual demarcation points, however, when these structures are part of a commercial recreational complex (such as a motel, resort, campground, or marina) and function as vacation housing.

III. Parties' Positions

A. Complainant

Mr. Heit maintained there are no real differences between the mobile home owners in the *Ives* case and the mobile home owners who rent space at his resort. He asked the Commission to order U S WEST to establish individual demarcation points for all resort guests who request them.

B. The Department

The Department agreed with Mr. Heit that resort guests should receive individual demarcation points under the tariff revisions required in the *Ives* Order. The agency argued that seasonal mobile home parks should not be treated differently than year-round mobile home parks. It pointed out that, if the mobile homes at issue were located on discrete lots outside the resort, U S WEST would extend individual demarcation points to them. It challenged U S WEST's

classification of the resort as commercial, instead of residential property, for demarcation point purposes.⁴ It emphasized that the Company had a duty to serve everyone within its service territory and could not refuse to serve customers who would impose above-average costs on the system.

C. U S WEST

U S WEST claimed that the *Ives* Order applies only to permanent, year-round housing and that extending its requirements to include mobile homes, travel trailers, and cabins at resorts would not be in the public interest.

The Company stated that the cost of installing individual demarcation points at Wee Villa would be substantial and that the revenues from providing service there would not come close to recovering costs. The Company questioned the appropriateness of requiring the general body of ratepayers to subsidize the extension of service to resort guests and cautioned that the costs of doing this throughout the state would be high. Finally, the Company argued that requiring it to install individual demarcation points would weaken its competitive position vis-a-vis new entrants.

IV. Commission Action

The Commission will deny the relief requested by Mr. Heit and dismiss the complaint.

The *Ives* Order does not address the location of demarcation points on resort property. It was clearly directed to situations involving permanent places of residence.

The Order was grounded in “the Commission’s longstanding concern for the needs of renters and low-income people and for the continuation of universal service.” *Ives* at 4. It was intended to reverse specific, unintended consequences of an earlier demarcation point Order -- hardship to mobile home owners, differential treatment of townhouse owners and renters, and higher housing costs for consumers choosing anything other than single-family detached housing. *Ives* at 4. These concerns are not at stake here.

The issue here is whether it is more consistent with the public interest for the general body of ratepayers or the resort owner to bear the cost of bringing telephone service from the property line (or some point or points close to that line) to each lot in the resort. The Commission finds that it is more consistent with the public interest to place this responsibility on the resort owner.

⁴There was no dispute, however, that once a demarcation point was established, resort guests would qualify for residential rates.

The general rule is that the property owner bears the cost of wiring from the property line to the point(s) where telephone service is used. This reduces costs chargeable to the general body of ratepayers, places costs on those for whose benefit they are incurred, and opens up to competition a business -- installing inside wire -- that is well suited to competition. For these reasons, the general rule is good public policy.

There is no compelling public policy reason to depart from the general rule here, as there was in *Ives*. Requiring other ratepayers to share the costs of connecting every home in Minnesota to the telecommunications network is one thing; requiring them to share the costs of connecting every mobile home, cabin, and travel trailer on resort property is another.

There is no inequity or threat to the public good in requiring resort owners who wish to offer telephone service to install the wiring to individual lots, cabins, or campsites. Placing these costs on resort owners will, at worst, raise the price of resort accommodations. Placing these costs on the general body of ratepayers, on the other hand, will, at worst, raise the price of telephone service. This not only raises issues of fairness, but works at cross purposes with the cardinal goal of universal service, since every rate increase pushes some households closer to or over the line at which telephone service is no longer affordable.

For all these reasons, the Commission will deny the relief sought by Mr. Heit and dismiss the complaint.

ORDER

1. The relief sought by complainant is hereby denied and the Complaint dismissed.
2. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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